IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.491 of 2007

The Commissioner of Income-tax,
Coimbatore. ..Appellant

Vs

M/s.Revathi Equipment Ltd.,
Pollachi Road,
Malumachampatti Road,
Coimbatore-641 021. ..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.1375/Mds/2004 dated 19.05.2006 for the assessment year 2001-02 against the order of the Commissioner of Income Tax (Appeals) - I Coimbatore dated 29.06.2005 made in Appeal No.123/04-05.

For Appellant : Mr.T.Ravi Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.1375/Mds/2004 dated 13.05.2006 raising the following substantial questions of law:-

> Whether in the facts and circumstances of the case, the Tribunal was right in holding that the levy of the interest under section 234B and 234C was not warranted?

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2. The facts leading to the above substantial question of law are as under:

The assessee is a company incorporated under the Companies Act. The relevant assessment year is 2001-2002 and the corresponding accounting year ended on 31.03.2001. The assessee filed Return of income 30.10.2001 admitting total income of Rs.16,67,51,520/-. The Return was processed under Section 143(1) of the Income-tax Act ("Act" in short). Later, the assessment was taken up for scrutiny and the same was completed under Section 143(3) and determined a total income of Rs.17,31,76,488/-. The assessee was under the impression that the payments made under Voluntary Retirement Scheme ("VRS" in short) are allowable deductions on the basis of this Court judgments in the case of C.I.T. Vs. George Oakes Ltd. (197 ITR 288) and in the case of C.I.T. Vs. Simpson & Co. Ltd. (230 ITR 794) in spite of the fact that a new provision under Section 35DDA was introduced first time by the Finance Act of 2001 and the same was made effective from 01.04.2001. The bill was introduced on 28th February 2001. The assessee failed to pay the advance tax. Hence the Assessing Officer levied interest under Sections 234B and 243C of the Act and completed the assessment. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of levy of interest under Sections 234B and 234C of the Act. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the assessee's appeal and upheld the levy of interest under Sections 234B and 234C of the Act. Hence the present appeal by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted Section 35DDA was introduced by the Finance Act, 2001 with effect from 01.04.2001. Hence the assessee was not entitled to full deduction on account of Voluntary Retirement Scheme payments and hence liable to pay advance tax. He further submitted that the assessee ought to have estimated and paid the advance tax. Hence the levy of interest under Section 234B and 234C of the Act was justified.

4. Heard the counsel. The assessment year is 2001-2002. The assessee is liable to pay the advance tax on or before 15.06.2000, 15.09.2000, 15.12.2000 and 15.03.2001. The assessee had paid the advance tax, but such advance tax was paid after deducting the payment made under VRS. He further submitted that, at the relevant point of time, there were two binding decision of this Court in the case of C.I.T. Vs. George Oakes Ltd. (197 ITR 288) and in the case of C.I.T. Vs. Simpson & Co. Ltd. (230 ITR 794), in favour of the assessee. In view of the said judgments the assessee was allowed to deduct expenditure incurred on payment to workers towards VRS. Only later, a new provision under Section 35DDA was introduced for the first time by the Finance Act, 2001. It came into effect from 01.04.2001, i.e., the assessment year 2001-2002. Since the provision came for the first time by the Finance Act, 2001, the assessee could not have envisaged that he would become liable for payment of tax

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even against VRS payments, which were otherwise allowable in view of the above two decisions of this Court. Further it was found that the assessee paid a further sum of Rs.90,00,000/- on 06.08.2001 as self-assessment tax, i.e., much before filing of Return on 30.10.2001. The Tribunal considered all the relevant available materials on record and also the scope of Sections 207 and 208 of the Act and held as follows:-

> "We have no doubt in our mind that levy of interest under section 234B and 234C are of mandatory nature, but at the same time, if we read section 234B and 234C carefully, we find that such liability is fastened to those assessee's who are liable to pay advance tax. Now let us see who are liable to pay advance tax and how. Section 207 and 208 reads as under:
>
> > "207. Tax shall be payable in advance during any financial year, in accordance with the provisions of section 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, such income being hereafter in this Chapter referred to as "current income".
> >
> > 208. Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is five thousand rupees or more.".
>
> 7. A combined reading of the above provisions makes it clear that the assessee has to pay taxes in advance in respect of the total income of the assessee, which would be chargeable in a particular assessment year. Now before the introduction of section 35DDA, the legal dictum was very clear that the assessee could claim expenditure incurred on account of payment made for VRS by the assessee in view of the binding decisions of the Hon'ble jurisdictional High Court in the case of CIT v. George Oakes Ltd. and CIT v. Simpson & Co Ltd. cited supra. In both the decisions, it was clearly laid down by the Hon'ble jurisdictional High Court that payments to employees under VRS were in the nature of business expenditure and was deductible under section 37. Therefore, till the introduction of new provisions under section 35DDA, the assessee could have estimated the income legitimately after reducing the expenditure incurred on VRS. It is a common knowledge that Finance Bill is introduced on 28th February and the same is made into the Act after passing the bills in both the Houses of Parliament and receiving the consent of Hon'ble President of India some where in May or June, which means till that date no assessee can visualize that a new liability would be fastened to him. Normally, new provisions are

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introduced with effect from next assessment year, but this provision under section 35DDA was introduced by the Parliament in its wisdom with effect from 01.04.2001 i.e. the same year and that is why difficult has arisen for visualizing the liability and the assessee could not deduct such expenditure. In fact in almost identical circumstances in the 3rd Member decision by the Delhi Bench in the case of Haryana Warehousing Corporation v. DCIT (75 ITD 155) it was held that in such situations the legal dictum "LEX NON COGIT AD IMPOSSIBILIA" would be attracted. The simple meaning of this dictum is that "law cannot compel you to do the impossible". In the case before us also, the assessee could not have visualize till the last instalment of advance tax i.e. 15.03.2001 that he would not be entitled to deduct VRS payments. Therefore, the assessee could not have done anything other than to estimate the liability to pay advance tax on the basis of existing provisions. We are of the considered opinion that in such situation, it cannot be said that the assessee was liable to pay advance tax. Once we come to the conclusion that the assessee was not liable to pay advance tax, there is no question of charging tax under section 234B and 234C. In similar circumstances in the case of Priyanka Overseas Ltd. v. DCIT, where the assessee had treated the receipt of cash assistance as capital receipts, which was subsequently amended to be business receipt by the Finance Act, 1990, it was held that in such cases interest under section 234B and 234C was not chargeable. In these circumstances, we think that the assessee was not liable to pay advance tax and therefore levy of interest under section 234B and 234C is not justified. Further, it is pertinent to note that the assessee by way of abundant caution deposited a sum of Rs.90,00,000/- on 06.08.2001 i.e. much before the due date of filing of return, which also prove the bonafide credentials of the assessee. In these circumstances, we set aside the order of the ld. CIT(A) and delete the levy of interest under section 234B and 234C."

From a reading of the above, it is clear that the Tribunal had taken a view that the Finance Bill introduced was passed in both the Houses of Parliament, receiving the consent of the Hon'ble President of India, on 11th May 2001. Till that time, the assessee could not have visualized that the individual liability would be fastened on him. It is also found by the Tribunal that the assessee fairly deposited a sum of Rs.90,00,000/- by way of self-assessment on 06.08.2001 before the date of filing the Return which also prove the bona fide credentials of the assessee. On the above two grounds, the Tribunal accepted the case of the assessee that the assessee is not subject to advance tax. Findings given by the Tribunal are based on valid materials and evidence and we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

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5. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench "D",
   Chennai, Rajaji Bhavan,
   Besant Nagar, Adyar, Chennai - 90.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) I,
   Coimbatore.

4. The Assistant Commissioner of Income-tax,
   Company Circle-I(1), Coimbatore.

1 cc To Mr.N.Muralikumaran, Sr.Standing Counsel for IT, SR.33372.

T.C.(A) No.491 of 2007

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RVL 29.06.2007

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